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ABSTRACT

This paper presented at the 1977 meeting of the World Organization of Preschool Education (OMEP), reviews legal acts concerning the family in Poland; specifically the family law, the custodial law, and the matrimonial property law. Subjects discussed include: (1) legal protection of the family; (2) social protection of the family; (3) principles concerning family functioning in the light of family and custodial law, the composition of Polish families, durability of marriage, legal protection of children's well being, equalization of rights of married couples, property laws and protection of interests of illegitimate children; (4) rights and duties of parents under the family and custodial law; and (5) substitutional (foster) family provisions. (SB)

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THE RIGHST AND DUTIES OF FAMILY IN POLAND

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THE RIGHTS AND DUTIES OF FAMILY IN POLAND

W a r s a w 1977

THE RIGHTS AND DUTIES OF FAMILY IN POLAND

1. Introductory Remarks

The family, being the essential social unit, fulfils multiple functions. It is in the family that the individual satisfies best his emotional needs, finding support in it as well as the conditions favourable for the full development of his personality. The family plays the basic role in the field of socio-educational tasks concerning the young generation and it shapes the first system of child's moral ideas. Thus, the family is a factor indispensable for maintenance of both biological and cultural continuity of the society and nation.

It is especially in the socialist system that the family is conceived as a link indispensable for the social development. This finds its expression not only in the theoretical principles of the socio-political system but, as well, in the specific constitutional and legislative decisions in the socialist states.

In Poland, the importance ascribed to marriage and family has found, among the others, its expression in the fact that shortly after country's liberation from the Nazi occupation, the legal acts making the basis of the new

popular-democratic system comprised the new matrimonial law, set up in September of 1945.

The successive legal acts, concerning the family, were the following: the family law /22nd January, 1946/. the custodial law /14th May, 1946/ and the matrimonial property law /the 29th of May, 1956/.

The decrees promulgated in 1945-1946, being the result of the family law unification, have brought the progressive changes concerning the family which they have been obligatory till now. They consisted in: laicization of the matrimonial institution and separating it from the religious dogma, abandoning of the supremacy of man over woman both in matrimonial relations of husband and wife and in those of parents and children, replacement of paternal authority by parental one executed in the interest of children and society, equalization of non-matrimonial children and in the trend towards protection of family and its durability. It is on such principles that the shape of the new socialist family law has been set up.

The above-mentioned legal acts were replaced in 1950 by the uniform family code, then by the legal solutions of family law in 1964 and its novelization in

1975.

2. Legal Protection of Family

In Poland legal protection of family results from the decisions of the Constitution of the Polish People's Republic, which stresses the position of the family in the society and, in particular, from its art. No 79, bill No 1, stating that: "matrimony, maternity and family are subject to protection and care of the Polish People's Republic, the multi-issue families are granted special state care".

This constitutional principle has been developed in various sections of the Polish legislation. The family Law is of basic importance for family protection, normalizing all the essential institutions connected with family functioning, such as matrimony, relations between parents and children, adoption, protection and tutelage. The decisions of civil law have, as well, their impact on the family situation normalizing, for instance, the problems concerning heritage, legal capacity, interdiction and the like. The civil legislation law comprises many decisions which facilitate the procedure of the execution of claims resulting from family relations, in particular as concerns alimony claims

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and all the others connected with care for the child. The legal protection of family is, to a great extent, connected with the labour legislation, especially with the chapters dealing with maternity protection and the rights of working women. The role played by the social legislation is of extreme importance as it normalizes the material benefit of the family such as family pensions, family grants and other forms of state assistance to children and families. Certain decisions concerning the family can be found in financial legislation /for instance, tax reductions for multi-children families/ and in administration legislation /for instance, family assistance when the only family supporter has been summoned to military duty/.

The penal law, as well, deals with the protection of family interests, regulating the problem of penal responsibility for offenses against the family, protectors and youth. This is a complicated problem, because the regulations of penal law should preserve a proper proportion between the social interests and the sphere of personal rights of the citizen, to which his private family life belongs. The penal-legal means concerning both strengthening and protection of family are conceived as the extremities, they fulfil, however,

an indispensable role in the process of protecting the family against the redoutable acts hitting at its good.

The above-given condensed review of problems shows that the family protection by the Polish law is of a multi-level character.

3. Social Protection of Family

In Poland a broadly conceived social care as well as various forms of State material assistance to family can be found in addition to legal protection.

The Polish social policy is characterized, first of all, by intensification of actions aiming at assuring to family the conditions favourising its development and strengthenning its- protective and educational functions. Important decisions have been made in Poland in recent years, including, among the others, special protection of women's work, prolongation of maternity leaves, increasing of family allowances with the preference of multi-children families, setting up of alimony fund, facilitating of life start to young marriages due, among the others, to the help in a quicker allocation and arrangement of their own flat.

The following factors play an important role in

protection of maternity and of the family:

- obligation of giving a more suitable and easier work to the pregnant woman even in the initial stage of pregnancy, including the guarantee of the maintenance of the wages-level,
- introduction of breaks in women's work because of maternity owing to statutory maternity leaves up to 16-18 weeks,
- possibility of a 3-year unpaid leave for the woman bringing up a small child /115 thousand women took such a leave in 1973/.

The right to parental leave from work in order to take care of the sick child as well as the right to the full pay for two free days annually for mothers of children up to 14 years belong, as well, to the allowances facilitating the families to play their protective-educational function.

The allowances of subject character comprise family benefits. The Polish system of family benefits, introduced in 1947 aimed, in conformity with its etiology, at a partial recompense of expenditure born by the families for maintenance of children. These benefits were differentiatied, for a relatively long period of time, depending on the number of children in

the family. They were granted to all the authorised families independently of the level of well-being, and amounted to the same sum.

The evolution has aimed at a consolidation of the principle of direct, linking the level of grants with the level family's well-being estimated in terms of income per head. These measures have resulted in a diminution of the disparities in the well-being of working families due to the number of children.

More over, what sums to be worth of attention is the State help to the families bringing up handicapped children. Assistance of the State takes the form of financial allowances to family benefits granted to children. The organisation of help to families of such children is not only restricted to financial assistance, as it involves the whole set of medical and educational measures aiming at re-validation of the cripple child and preparing him to life and work within the society. As concerns health protection, free medical care granted in Poland to all the children is of essential importance.

Particular attention is focussed in Poland on the means and possibilities of meeting social needs

needs of illegitimate children and the children from incomplete families. This susceptible social problem has been solved in Poland within the framework of one on the basic institutions of family law, namely the alimony duty. In 1974, a bill was promulgated on alimony fund. On its basis the State has taken over the obligation of paying a part of alimony decided by the Court in the case when its execution is faced with serious obstacles and the person authorised to alimony is in difficult material conditions. This bill is the further expression of the State policy aiming at protection of family interests with special emphasis given to the interets of small children.

An important form of family assistance is the care for the small child. The dynamic quantitative increse of places in crèches set up for children aged up to three and in kindergartens for children aged 3-7, is an evidence in this respect.

In addition to general crèches and kindergartens, big productive enterprises dispose of their own ones, destinated mainly for the children of their workers. The working time of these institutions is adapted to the family's needs.

Various forms of organised rest are granted to older children in Poland in the period of both summer and winter holidays. The numbers of children participating in summer and winter camps, health camps and sanatoria stays increase annually.

The above-mentioned benefits are not complete. We have only presented the most essential aspects which were subject of important solutions in recent years.

Against the background of measures taken up by the State in the social field, both carried out or in project for the nearest future, the legal family protection, envisaged by the provisions of both family and penal law is becoming more important. On the one hand, a number of legal regulations, concerning the family strengthening will become more realistic because of the support of the new social policy. On the other hand, it is just this social policy that will sometimes require a new approach to the obligatory legal solutions, either as concerns their proper formulation and application or, even, in regard to certain legislative changes.

4. Principles Concerning Family Functioning in the Light of Family and Custodian Law

4.1. Family and Its Composition

Following the Polish regulations of family law taken as a whole, parents and children constitute the family in terms of its provisions, thus the code conceives the family in its narrower meaning. The monogamic marriage is the source of the setting up of family. The family is composed, first of all, of small children and of those who have come of age-unless they have become independent.

In order to assure the full legal protection of the interests of every family member and of the family taken as a whole, the Polish legislation has introduced a principle according to which everyone can prosecute one's civil state. No exceptions are provided to this principle. The broad scope of this principle is expressed by the fact that the right of prosecuting the parental relation, maternity relation and positive establishment of paternity in principle is not subject to time limitations.

The particular way of establishing the family

composition consists in adoption, because in terms of the Polish law it results in establishing legal-family relation, strictly parallel of natural parental relation. The institution of adoption serves the essential goal of assuring the proper development at conditions within the family to the child deprived of natural milieu.

The family is conceived as the basic social unit. Thus the family is a community in both sociological and economic terms. Though the family is not a legal person, it is treated as a unity by the Polish legislation. This finds its expression in the provisions using such notions as "the good of the family", "the needs of the family" or "the common family household". More over, the family is conceived as a whole as concerns satisfaction of its needs and provision of means indispensable for it.

The principle of the community of family is in concordance with the principle of co-action of the whole family, thus not only of parents but of children, as well. It is expressed by the duty of parents and children to support themselves mutually, thus, the duty of parents is to take care of family interests and

that of children is to help the parents and contribute to the cost of family maintenance - if they only dispose of their own income.

4.2. Durability of Marriage and Family

In Poland, the principle of durability of marriage serves the consolidation of family. However, it is not identified with the formal indissolubility of marriage tie, that has its source in the religious dogma. Conceiving the break of family links as negative, the State conceives, as well, the social harm of dead marriage tie. It rejects for this reason, the principle of indissolubility of marriage tie and adopts the attitude that matrimonial durability should be achieved through social consciousness of the married couple and the serious and responsable attitude towards the family duties resulting from it.

Thus, the divorce is the necessary evil, introduced in the name of the social interest in order to eliminate another social evil which consists in the maintainance of formal marriage tie whwn the marriage community does not exist anymore, when the marriage is not existing in fact and when there are no chances for its further functioning.

4.3. Child's well-being - Social Interest

The principle of child's well-being is the paramount principle to which the family, taken as a whole, is subject. The child's well-being decides, first of all, how, in concrete, the parents should fulfil their duties concerning the family. The Polish family law is imbued with care for the child. The interpretation of the Supreme Court has equalized the child's well-being with the social interest.

The child's well-being is at stake, first of all, in the sphere of relations between parents and children. The child's well-being properly conceived as well as the social interest are the main premises of granting the parental authority to one of the parties in the case of divorce. Deciding to whom from the divorced couple the parental authority should be granted the court has exclusively in view the child's well-being and the social interest. It analyses who from the divorced couple gives a better guarantee of taking both physical and spiritual child's evolution, taking into consideration the personal parents' valours.

The principle of the Polish family law, consisting in endeavours to realize the good of the small child in every divorce case, does not fully eliminate

the interest of parents as one of the premises for taking the decision concerning the relations between the parents and children.

4.4. Equalization of Rights of Married Couple

The family law in the Polish People's republic consequently embodies in life the principle of equal rights of the married couple in all its successive acts, beginning with the decrees of 1945 up to the family and custodian Code of 1964 and its novelization in 1975.

The decisions of the Supreme Court stress equal rights and duties in the family, expressed both in relations between husband and wife and in relations between the parents and children.

Neither of the married couple is deprived of the right to work professionally outside home because of duties concerning the home and the children.

Observing the principle of equal rights of the married couple, the Supreme Court states that they should not be conceived formally without taking into consideration the specific relation of mother and child, especially the young child. For this reason it is ac-

cepted that - though in case of divorce each of the married couple is equal in the right of claiming the parental authority over children - however, it is advisable that in the period of infancy and early childhood the child remains under mother's care because of her mental construction, greater emotionality and its externalization as well as because of the care to properly meet the child's everyday needs typical of the mother.

4.5. Property Community as a Factor Consolidating the Family

Introducing the system of matrimonial community to the Polish family law, its authors had, first of all, in mind the ideological reasons. The system of community in his intention is to serve the strengthening and consolidation of family owing to creation of economic in addition to both physical and spiritual bonds between the married couple.

The property community serves best the principle of equal rights of husband and wife and it liquidates man's economic and legal supremacy. Under the normal conditions, the system of community serves better satisfaction of family needs and provides the basic for its material existence.

4.6. Protection of Interests of Illegitimate Children

The Polish family law does not recognise the discrimination of children born outside marriage thus granting them full rights as regards both parents. The principle that the rights of the child born outside marriage be restricted has been given the constitutional rank /art.79, bill 4 of the Constitution/.

The problem of illegitimate children occured as a broader social phenomenon only in the first years of the People's Poland, when the new provisions on equalization of illegitimate children were not fully recognised and when such children were subject, in practise, to various forms of discrimination.

5. Rights and Duties of Parents

The provisions of family and custodial law concerning the parental authority are formulated in a way assuring a possibly universal development of the family and the conditions for a proper carrying out of its social function. The mere conception of parental authority as well as the essential direction of its executing, determined by the author of the law serve these goals. This direction is shown in art. 95 par. 3

of the above code, according to which the parental authority be executed for the child's good and the social interest. In connection with such a principle, the parental authority formulated by the Polish legislation means, first of all, the ensemble of duties concerning the child. The rights of parents as concerns the child are, in a way, the secondary component of this authority. This finds its expression in the formulations of the provisions of code, in which the duties are enumerated in the first place being followed by parents'rights.

Parents' duties concerning their small children comprise two essential groups:

a/ duties connected with the multi-sided care of children /parental authority/;

b/ duties consisting in assuring the child the necessary means for maintainance and up-bringing /alimony duty/.

The duties singled out in the second group - in conformity with the principle of equalization of all children - concern both the legitimate and the illegitimate child.

The parents can fulfil their duties in a proper

way first of all because of the fact that the family being under their direction enjoys a proper dose of independence and parents - a set of rights properly shaped. This "independence" of family as well as the proper shape of parental authority are, first of all, expressed by a full scope of parents' rights, because the parental authority comprises the whole set of problems concerning the child, i.e. his up-bringing, care, management of his property and his legal representation. Parents give the essential direction to child's up-bringing. The parents decide upon the place of child's staying, or claim to any other person including the nearest relations to give the child back.

The principle of family independance is not contradictory to the assumption - resulting of the code provisions - that parents' right to child's up-bringing does not exclude the rights of other factors in this respect such as school or youth organisations. On the contrary, the influence exerted by these factors is a natural completion of parental up-bringing. However, stress should be put here upon the fact that parents' role in child's up-bringing is prioritary and decisive.

Subordination of children to parents expressed by the duty of child's obedience to parents is parallel to parents' rights. The principle, according to which the parental authority is granted to both parents /art. No 93, § 1, family-custodial code/ is an additional guarantee of a proper exercising of parental authority. The parents' opinion is equal and eventual divergences are decided by court of wards /art. No 24, f. c. c./.

Despite a considerable dose of independence, the parents are not omnipotent in exercising the parental authority. They are subject to certain limitations because of child's good. One of such limitations consists in the supervision of court of wards, which has the possibility of intervention, in the form recognised as proper, in the case of improper execution of parental authority.

The natural parallele of the supervisory function of the court of wards is its duty to give all the help to parents, if needed for a proper execution of parental authority. Other State organs have, as well, obligation of being of such help. /art. No 100 of the f.c.c./

The provisions concerning the parental authority are necessarily completed by the norms of code envisaging intervention of the court of wards in the case of phenomena harmful to child and connected either with the fact that the parents exercise their parental authority in a bad way or that they are unable to fulfil it normally because of the place of their inhabitance or bad health.

The mutual alimony duty of parents and children is one of the elements that consolidate the family and serve its protection.

Parents' alimony duty concerning their small children comprises the duty of providing them with both maintainance and educational means. /art. No 128, of f.c.c./

The execution of alimony duty in relation to the child which is still unable to earn his own living independantly, can, as well, consist either completely or partially in personal endeavours to maintain or educate the child /art. No 135 § 2, f.c.c./.

In conformity with the pratically-consolidated opinion, the children not yet able to earn their living independently have the right to the standard of

living equal to that of their parents.

The above-mentioned principle has the consequence that parents can in no case shirk the alimony duty concerning the child who is not yet independent only on the basis of statement that fulfilment of this duty would be too heavy a burden for them. The parents have the absolute duty of child's maintainance, limited only by their earning and property possibilities. Thus, the parents have the obligation to share even the smallest earnings with their children.

This principle, together with the institution of matrimonial legal community is of great importance as concerns assuring the lasting material base to the family.

Obligation of both parents to cooperate in management of the common property set up, among the others, in art. No 36 of f.c.c. serves this goal. This obligation can be implemented either independently by each of the married couple without the stare of the second one exclusively as concerns the action connected with the mere management.

Proper satisfying of family needs requires from

husband and wife both creation and multiplication of the common property according to their forces and possibilities of earning.

6. Substitutional Family

For child's good, the Polish family law has introduced the institution of substitutional family to its legal provisions. The necessity of assuring the proper care and up-bringing to the children deprived of natural family milieu or endangered in this milieu resulted in the development of substitumional families.

Pulfilment of the function of substitutional family can be exarced by persons related to the child as well as by strange ones in relation to the child taken under care. The substitutional family is obliged to give the child the universal care and up-bringing and to create conditions favourable for his full development. The State material assistance is given to children placed in substitutional families.

The up-bringing in substitutional families, similar to that in a family normally functioning, is a form of child's complete care when he is deprived of his own family home.

7. The End

The modern family, despite the transformations connected with social changes as well as the scientific and technological revolution, still remains the irreplaceable and basic unit of the social life.

The regulations of the Polish family and custodial code correspond to the model of modern family in a socialist society. A proper shaping of relations between parents and children, the decisions concerning family problems in view of the criterion of child's good are, among the others, the premises for the family durability.

A succesful implementation of the programme of the socio-economic country's development creates the conditions favourable for the development and functioning of the family in Poland. The proper utilizing these conditions depends on the consciousness and good-will of all the citizens, on their sense of responsibility not only for their respective fate but for that of the members of their families, as well.

The State's task consists in the trend to reveal any symptoms of improper functioning of the family,

particularly as concerns child's endangered interests and liquidation of factors provoking the disturbances in family life because the family its functioning and up-bringing of children is not only the domain of individual but the question of serious social consequences.

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